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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 MYRIAM GARCIA,

11 Plaintiff,

12 v.

13 MARK DAWAHARE, FARMERS NEW
14 WORLD LIFE INSURANCE COMPANY,

15 Defendants.

Case No. 2:06-CV-00695-KJD-LRL

ORDER

16 Presently, the Court has before it Plaintiff's Motion for Remand (#4). Defendant Farmers
17 New World Life Insurance Company ("Farmers") filed a response in opposition (#9).

18 **I. Background.**

19 In June 2003, Plaintiff's husband, Loreto Garcia, purchased a life insurance policy from
20 Defendant Farmers. Defendant Dawahare was the insurance agent who assisted Loreto Garcia in
21 purchasing the policy. Plaintiff was the named primary beneficiary of the subject life insurance
22 policy which was in the amount of \$100,000.

23 On January 31, 2005, Loreto Garcia died. The death certificate listed the cause of death as
24 cardiopulmonary arrest due to a consequence of cardiomyopathy. Plaintiff timely notified Defendants
25 of her husband's death. On June 16, 2005, and after investigating Plaintiff's claim for almost five
26 months, Defendant Farmers sent Plaintiff a letter stating that her husband had made material

1 misrepresentations on his application about his past medical history. Given these alleged material
2 misrepresentations, Defendant Farmers considered the policy null and void from its inception date
3 and returned to Plaintiff all of the premiums that were paid.

4 Due to the denial of the policy, Plaintiff filed the instant action in state court on October 10,
5 2005. In the complaint, Plaintiff brought a breach of fiduciary duty claim against Defendant
6 Dawahare. Against Defendant Farmers, Plaintiff brought claims for breach of contract, bad faith,
7 and violation of Nevada's Unfair Trade Practices Act. Based on events revealed during discovery,
8 Defendant Farmers re-evaluated and then reversed its prior decision declaring Loreto Garcia's policy
9 null and void due to alleged material misrepresentations. On January 26, 2006, Defendant Farmers
10 paid Plaintiff the life insurance proceeds of \$100,000 plus interest of \$3,500. On May 31, 2006,
11 Plaintiff dismissed Defendant Mark Dawahare. With the dismissal of Defendant Dawahare, the
12 parties were completely diverse.

13 Accordingly, Defendant Farmers filed its Notice of Removal on June 7, 2006. Farmers
14 premised the removal on original jurisdiction based on diversity of citizenship. On June 13, 2006,
15 Plaintiff filed her Motion for Remand. Plaintiff does not dispute that complete diversity is now
16 present. Rather, she claims that Defendant Farmers has failed to demonstrate that the amount in
17 controversy is in excess of \$75,000.

18 **II. Analysis.**

19 The defendant in a removal action has the burden of establishing that removal is proper. See
20 Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Federal courts strictly construe the removal
21 statutes against removal jurisdiction. See id. Doubts as to removability are usually resolved against
22 the right of removal and in favor of remanding the case to state court. See id.

23 Removal is only appropriate for cases that might have originally been brought in federal
24 court. See 28 U.S.C. § 1441(a); Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987). Federal
25 district courts have original jurisdiction over suits between citizens of different states in which the
26 amount in controversy exceeds \$75,000, exclusive of interest and costs. See 28 U.S.C. § 1332(a).

1 Generally, the amount in controversy is determined from the face of the pleadings. See Crum v.
2 Circus Circus Enters., 231 F.3d 1129, 1131 (9th Cir. 2000); Singer v. State Farm Mut. Auto. Ins.,
3 Co., 116 F.3d 373, 375 (9th Cir. 1997) (stating that the district court simply reads the ad damnum
4 clause of the complaint to determine whether the amount in controversy requirement had been met).
5 The sum claimed by the plaintiff controls so long as the claim is made in good faith. See Singer, 116
6 F.3d at 375 (quoting St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 288-90 (1938)).
7 Rule 8 of the Nevada Rules of Civil Procedure, however, prohibits the pleading of damages in a
8 specific amount over \$10,000. See Nev. R. Civ. P. 8(a). When the amount in controversy is not
9 facially apparent from the complaint, the removing defendant must support federal jurisdiction by
10 setting forth facts that support a finding of the requisite amount. See Singer, 116 F.3d at 377. The
11 removing defendant must prove the existence of the amount in controversy by a preponderance of
12 evidence. See Sanchez v. Monumental Life Ins. Co., 102 F.2d 398, 403-04 (9th Cir. 1996).

13 Defendant Farmers argues that the amount in controversy requirement for a diversity action is
14 met even if the Court were to rely on only the remaining claims.¹ Plaintiff's remaining claims are
15 primarily an extra-contractual claim for bad faith and a claim under Nevada's Unfair Trade Practices
16 Act. In relation to these claims, Plaintiff seeks general, special, and punitive damages. Given the
17 face value of the underlying life insurance policy, \$100,000, Plaintiff's demand for general, special
18 and punitive damages clearly satisfies the jurisdictional amount requirement. See Gibson v. Chrysler
19 Corp., 261 F.3d 927, 945 (9th Cir. 2001) (stating that it is well established that punitive damages are
20 part of the amount in controversy in a civil action); see also BMW of N. Am., Inc. v. Gore, 517 U.S.
21 559, 581 (1996) (stating that the Court had previously upheld punitive damage awards that were four
22 and ten times the amount of compensatory damages). Additionally, Plaintiff is seeking her
23 attorney's fees which her counsel has already estimated at over \$35,000. See Galt G/S v. JSS
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25 ¹It is not clear (and Plaintiff fails to cite any authority otherwise) that the court is limited to
26 the remaining claims when addressing whether the amount in controversy exceeds \$75,000. See
Singer, 116 F.3d at 375 (quoting St. Paul Mercury Indem. Co., 303 U.S. at 288-90).

1 Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998) (holding that where an underlying statute
2 authorizes an award of attorneys' fees, either with mandatory or discretionary language, such fees
3 may be included in the amount in controversy); Farmers Home Mut. Ins. v. Fiscus, 725 P.2d 234,
4 237 (Nev. 1986) (upholding an award of attorneys' fees under Nev. Rev. Stat. 18.010(2)(b) against
5 an insurance company that the district court found to have breached the implied covenant of good
6 faith and fair dealing by the manner in which it denied the insured's claim). Defendant Farmers has
7 met its burden that the amount in controversy of just the remaining claims clearly exceeds \$75,000.

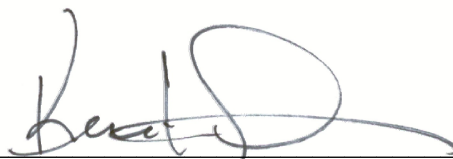
8 Moreover, Plaintiff's counsel has effectively admitted that Plaintiff is seeking more than
9 \$75,000 in damages. On page 4 of the Motion to Remand, counsel states that if Plaintiff's claims are
10 proven "any jury will award Plaintiff more than \$75,000 given Defendant's bad faith handling of this
11 life insurance claim." Also, Plaintiff's counsel has already made two settlement demands via Offers
12 of Judgment in the amounts of \$500,000 and then later \$125,000. These offers clearly show that the
13 Plaintiff is seeking more than \$75,000.

14 Finally, Plaintiff has failed to reply to Defendant Farmers' opposition. In its opposition,
15 Defendant Farmers sets forth the arguments and evidence necessary to met the amount in controversy
16 requirement of 28 U.S.C. § 1332(a). By failing to filing a reply brief, Defendant Farmers' arguments
17 and evidence are essentially uncontested. The Court therefore interprets Plaintiff's failure to file a
18 reply brief as consent that Defendant Farmers has demonstrated by a preponderance of evidence that
19 Plaintiff's claims are seeking more than \$75,000.

20 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Remand (#4) is
21 **DENIED.**

22 DATED this 6th day of September 2006.

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Kent J. Dawson
United States District Judge